

Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO and New York News, Inc., and New York Mailers' Union, Number 6.
Case 2-CD-623

April 3, 1981

**DECISION AND DETERMINATION OF
DISPUTE**

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by New York News, Inc., herein called the Employer, alleging that the Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO, herein called the Guild, violated Section 8(b)(4)(D) of the Act. A hearing was held pursuant to notice at New York, New York, on November 7 and 20, 1980, before Hearing Officer Margaret M. Kern. The Employer, the Guild, and New York Mailers' Union, Number 6, herein called the Mailers, appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Thereafter, the Employer and the Mailers filed briefs with respect to the merits of the dispute.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the basis of the entire record in this case, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The Employer is a New York corporation engaged in the printing, publishing, and distribution of a daily newspaper. In the course and conduct of its business, the Employer annually derives gross revenues in excess of \$1 million and purchases and receives supplies valued in excess of \$50,000 at its New York facility from sources outside the State of New York. Accordingly, we find that the Employer is engaged in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated and we find that the Guild and the Mailers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

The Employer's circulation department is responsible for producing mailing wrappers which

protect and direct distribution of bundles of newspapers as they leave the newspaper plant. Prior to the dispute herein, production of the wrappers began with the preparation of labeling information in the form of a blotter which was then made into stencils and printed by a "J" printer onto small, yellow address labels. All of the employees involved in the foregoing process historically have been represented by the Guild. The yellow printed address labels then were manually affixed onto brown craft paper by an A. B. Dick stamper machine, operated by employees in the Mailers bargaining unit, resulting in the production of a finished wrapper. In 1975, the Employer's Honeywell computer system was modified to enable keypunch operators in the Guild bargaining unit to direct address information, in the form of tape or disc, into the computer. Thereafter, other employees represented by the Guild, operating a computer command console activated a peripheral printer which printed the stored, labeling information onto white, fan-folded forms which were mounted atop the printer. The resulting run contained a series of sheets, each of which consisted of 10 address labels arranged in two columns. Data control employees represented by the Guild then placed the computer run into a UARCO 2240 decollating machine which, *inter alia*, divided each sheet in half vertically, producing two separate continuous sheets of five address labels per sheet. Thereafter, employees represented by the Mailers loaded the forms onto wrapper-write machines which cut and pasted each address label onto brown craft paper, thereby producing the finished wrapper.

In early 1980, the Employer replaced its 12-year-old Honeywell system with a Dec computer and also decided to utilize a larger printout document in order to produce two label/wrappers per fan-folded sheet by printing a single address label on each half of each sheet. The Employer also ordered a Standard Register 2500 bursting/decollating machine to perform the operation of splitting the larger forms vertically into finished label wrappers and thus eliminate the wrapper-writer machine function.¹ In June 1980, the Employer announced its plan to streamline the label/wrapper production process thereby causing the Mailers to protest that decision and to demand some portion of the work of preparing the label/wrappers for employees it represented. The Employer however rejected the Mailers' demand and assigned the work to employees represented by the Guild as part of their traditional work jurisdiction. After unsuccessful efforts

¹ At the time of the hearing herein, the Standard Register 2500 was not yet operational.

to persuade the Employer in its favor, the Mailers filed a grievance over the Employer's assignment and demanded arbitration of the matter under its collective-bargaining agreement with the Employer.

The Employer's director of labor relations, Naglieri, advised Guild Executive Vice President Fisdell by telephone and by letter of the Mailers claim to the computer and decollating/bursting machine work, and of its demand for arbitration over the Employer's work assignment. Fisdell responded by informing Naglieri that "In the event that work is performed by employees not in the jurisdiction of the Guild, the Guild will strike the News immediately." Fisdell also informed Naglieri that the Guild would not participate in any arbitration proceeding with the Mailers. Accordingly, on September 22, 1980, the Employer filed the instant charge.

B. The Work in Dispute

The work in issue involves the operation of the Dec computer peripheral printer and the Standard Register 2500 bursting/decollating machine used in the production of label/wrappers.

C. The Contentions of the Parties

The Employer contends that the Board should uphold its assignment to employees represented by the Guild to perform the work in dispute based on their superior skills and training acquired by their present and past performance of the work, and for reasons of economy and efficiency.

The Guild similarly contends that, in the past, only employees it represents have performed the work of printing labels; have performed the bursting work as well since the process had become automated; and that the Employer's elimination of the wrapper-writer machine function does not entitle employees represented by the Mailers to perform work which is undeniably within the Guild's jurisdiction.

The Mailers argues that the Employer's substitution of the peripheral printer and the Standard Register 2500 for the work formerly performed by employees it represented on the wrapper-writer machine is expressly covered by its current collective-bargaining agreement with the Employer which provides for retention of its work jurisdiction in such circumstances.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been

violated, and that the parties have not agreed upon a voluntary method for adjusting the dispute.

Inasmuch as the record clearly shows that the Guild threatened to strike in order to retain jurisdiction over the work in dispute, and that the Guild refused to participate in tripartite arbitration, we find, on the basis of the record evidence, that the parties have not agreed upon a voluntary method for adjusting the dispute and that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after taking into account the evidence supporting the claims of the parties and balancing all relevant factors.²

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

Section 3(d) of the Mailers contract with the Employer provides, in pertinent part, that:

Any person employed to operate new machinery, any computer process designed to supplant or substitute for machinery or work now exclusively under the jurisdiction of the Union shall be a journeyman or apprentice within the bargaining unit represented by this Union.

The Guild contract also provides for retention of "work normally performed by the Guild . . . whenever the Publisher introduces new or automated processes . . . which may affect the jurisdiction of both the Guild and some other union." The Guild contract further states that "the Guild's jurisdiction shall not be adversely affected in any respect by any agreement entered into or any assignment of work . . . with any other union." Inasmuch as both contracts present equally legitimate bases on which to claim the work, we find that the factor of collective-bargaining contracts does not favor an assignment to the employees in either unit over those in the other.

2. Employer preference and area practice

The Employer's assignment and its past practice of having employees represented by the Guild hand-print labels and later perform computerized

² *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [Columbia Broadcasting System], 364 U.S. 573 (1961); *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402, 1410-11 (1962).

printing of labels and bursting the computer forms supports the retention of those work functions to Guild-represented employees.

There is no evidence of any similar systems being utilized in the area. The Mailers, however, contends that this dispute is controlled by the Board's determination of a work dispute between the same parties at The New York Times Company,³ wherein employees represented by the Mailers were awarded some of the disputed work therein after electronic machinery was introduced which replaced a portion of the printing work previously performed by employees represented by the Mailers. Contrary to the Mailers, we find that determination, which involved different machinery and dissimilar past practices, was based on facts and factors distinguishable from the instant dispute, and that there is no area practice which favors the Mailers claim herein.

3. Skills and training

The record evidence reveals that at least 1 year of training would be required to enable employees represented by the Mailers to operate a Dec computer console; accordingly, the factors of skill and training strongly support the Employer's assignment of the computer printer portion of the disputed work. On the other hand, the evidence discloses that a minimal amount of training is needed to operate a Standard Register 2500. The combination of these factors, however, favors continuing the assignment of bursting machine work to employees represented by the Guild.

4. Economy and efficiency

Record testimony establishes that Guild-represented data clerks presently handle the bursting of at least 125 different forms which will be performed on the Standard Register 2500, and that the bursting portion of the disputed work accounts for only about 45 minutes per day of the Standard

Register machine's time. Accordingly, assignment of the bursting portion of the disputed work to employees represented by the Mailers would require hiring an additional employee, on a standby basis, to operate the machine for only 45 minutes per day and would result in an uneconomical duplication of the Employer's work force.⁴ Accordingly, we find that the factors of economy and efficiency favor an award to the employees in the Guild's bargaining unit.

Conclusion

Upon the record as a whole, and after full consideration of all the relevant factors involved, we conclude that the Employer's employees represented by the Guild are entitled to the disputed work based on their skills and training, the Employer's preference and past practice, and economy and efficiency of the Employer's operation. In making this determination, we are awarding the work in dispute to employees who are represented by Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO, but not to that particular organization or its members. This determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of the New York News, Inc., currently represented by Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO, are entitled to perform the work of operating the Dec computer peripheral printer and the Standard Register 2500 bursting/decollating machine at the Employer's newspaper plant facilities in New York, New York.

³ *Newspaper Guild of New York, Local 3, American Newspaper Guild, AFL-CIO (The New York Times Company)*, 150 NLRB 748 (1964).

⁴ *Local 74, Denver Newspaper Guild (Rocky Mountain News)*, 199 NLRB 34 (1972).